

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DAWN MCDONALD, and)	
ALLAHNAH B., an unemancipated minor,)	
by and through her Next Friend DAWN)	
MCDONALD,)	
)	No. 4:10-cv-00986 CDP
Plaintiff,)	
)	
vs.)	
)	
CITY OF FLORISSANT, MISSOURI, and)	
ANDREW GERWITZ,)	
)	
Defendants.)	

**PLAINTIFFS' SECOND AMENDED
COMPLAINT FOR DAMAGES**

Count I – Individual Claim of Dawn McDonald

Comes now Plaintiff Dawn McDonald and for Count I of her Second Amended Complaint against defendants City of Florissant and Andrew Gerwitz states as follows:

1. At all times mentioned herein plaintiff Dawn McDonald was a citizen and resident of the United States of America and the State of Missouri, County of St. Louis, Missouri.
2. At all times mentioned herein, defendant City of Florissant was a municipal corporation within the County of St. Louis and State of Missouri.

3. At all times mentioned herein, defendant Andrew Gerwitz was a peace officer employed by defendant City of Florissant, acting within the scope and course of his employment as a City of Florissant Police Officer.

4. At all times mentioned herein, defendant Andrew Gerwitz was acting under color of law as a Florissant Police Officer.

5. Defendant Andrew Gerwitz is sued in both his individual capacity.

6. At all times mentioned herein, plaintiff Dawn McDonald occupied, as her home, the residence located at 9237 Shadydale Dr., Jennings, Missouri.

7. The residence located at 9237 Shadydale Dr., Jennings, Missouri was a single family residence which plaintiff occupied exclusively with her two year old minor and unemancipated daughter, Allahnah B.

8. On Monday, January 11, 2010 defendant Gerwitz traveled from Florissant Missouri to 9237 Shadydale Dr., Jennings, Missouri.

9. On said date Gerwitz traveled to plaintiff's home in a marked police car accompanied by another uniformed Police Officer.

10. On said date Gerwitz and the uniformed officer knocked on plaintiff's door and, in response thereto, plaintiff opened the door and had a brief conversation with the police officers.

11. At the time, plaintiff was home alone with her daughter.

12. Shortly thereafter, Defendant Gerwitz and the uniformed officer entered plaintiff's residence and conducted a search of the premises.

13. The search was conducted without plaintiff's consent or permission.

14. The search was conducted without a search warrant.

15. The search was conducted without exigent circumstances which would justify a warrantless search of plaintiff's residence.

16. The search was conducted by the police officers forcing their way into plaintiff's residence.

17. The search was conducted outside the city limits of the City of Florissant and in the City of Jennings, Missouri.

18. Plaintiff Dawn McDonald had a reasonable expectation of privacy regarding the interior of her residence.

19. The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures.

20. The search of plaintiff's residence was an unreasonable search within the meaning of the Fourth Amendment.

21. The search by defendant Gerwitz was an unreasonable search in violation of the Fourth Amendment.

22. Plaintiff seeks damages and compensation for the violation of her civil and constitutional rights pursuant to 42 U.S.C. § 1983.

23. The search by defendant Gerwitz was causally related to the failure of the defendant City of Florissant to adequately train their police officers where to

conduct searches and to further train officers regarding those limited circumstances which would justify a warrantless search of a citizen's residence.

24. As a direct and proximate result of the aforementioned conduct of defendants plaintiff has been damaged.

25. In addition to her actual damages, plaintiff is entitled to damages for the constitutional violations as herein described and reasonable attorneys fees (42 U.S.C. § 1988) and additional costs.

WHEREFORE, plaintiff prays judgment against defendant City of Florissant and Andrew Gerwitz , jointly and severally, on Count I for damages in an amount which will fairly and justly compensate plaintiff, for her attorneys fees and costs, and for whatever other and further relief as to the Court shall seem meet and proper in the premises.

**Count II – Claim brought on behalf of Allahnah B, an
unemancipated minor**

Comes now Plaintiff Dawn McDonald, on behalf of and as next friend of Allahnah B, an unemancipated minor, and for Count II of her Second Amended Complaint against defendants City of Florissant and Andrew Gerwitz states as follows:

26. Plaintiffs adopt and reallage paragraphs 1 through 25 above as if fully and completely set forth herein.

27. At the time of the search, Allahnah B. resided in and was legitimately in the residence 9237 Shadydale Dr., Jennings, Missouri.

28. During the unlawful and unreasonable search by defendant Gerwitz, Allahnah B. became terrified and frightened to the extent that she involuntarily urinated in her pants.

29. Allahnah B. seeks damages and compensation for the violation of her civil and constitutional rights pursuant to 42 U.S.C. § 1983.

30. As a direct and proximate result of the aforementioned conduct of defendants Allahnah B. has been damaged.

31. In addition to her actual damages, plaintiff and Allahnah B. are entitled to damages for the constitutional violations as herein described and reasonable attorneys fees (42 U.S.C. § 1988) and additional costs.

WHEREFORE, plaintiff, on behalf of and as next friend of Allahnah B, an unemancipated minor, prays judgment against defendant City of Florissant and Andrew Gerwitz , jointly and severally, on Count II for damages in an amount which will fairly and justly compensate plaintiff, for her attorneys fees and costs, and for whatever other and further relief as to the Court shall seem meet and proper in the premises.

/s/ Gregory Fenlon

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